

Chapter NR 115

WISCONSIN'S SHORELAND PROTECTION PROGRAM

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NR 115.01 Purpose. (1) Section 59.692, Stats., requires counties to adopt zoning ordinances for the protection of all shorelands in unincorporated areas, and provides that if the department determines, after notice and hearing, that a county has not adopted a shoreland zoning ordinance by January 1, 1968, or that a county has adopted an ordinance which fails to meet minimum shoreland zoning standards that have been promulgated under s. 59.692, Stats., to accomplish the shoreland protection objectives found in s. 281.31, Stats., the department is to adopt a shoreland zoning ordinance to be administered by that county.

(2) Section 281.31 (1), Stats., provides that shoreland subdivision and zoning regulations shall: "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty."

(3) It is the responsibility of the department, in the discharge of its mandate under ss. 59.692 and 281.31, Stats., to require counties to adhere to specific standards and criteria for navigable water protection regulations and their administration. Section 281.31 (6), Stats., provides that: "Such standards and criteria shall give particular attention to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations."

(4) In order to meet the shoreland protection objectives found in ss. 281.31 (1) and (6), Stats., and to adequately protect local resources, counties may need to adopt more protective shoreland zoning and land division regulations than are required by the minimum standards in this chapter, such as waterway classification systems.

NR 115.02 Applicability. (1) The provisions of this chapter are applicable to county regulation of the use and development of unincorporated shoreland areas, and the regulation of previously unincorporated shoreland areas that were annexed by a city or village after May 7, 1982 or incorporated as a city or village after April 30, 1994. References in this chapter to counties, or county government agencies, shall be read to apply to cities and villages, or city and village agencies, when this chapter is applied to annexed or incorporated areas in situations where s. 59.692 (7), Stats., requires that shoreland zoning is to continue in effect.

(2) Town zoning ordinances that are more restrictive than the shoreland zoning ordinance of the county in which the town is located may be enforced in the shoreland zone, in addition to county shoreland zoning, to the extent of the greater restrictions, but any provisions that conflict with, or are less restrictive than, the county shoreland zoning ordinance are unenforceable in the shoreland area.

NOTE: A town has the authority to adopt a town zoning ordinance, including a town shoreland zoning ordinance, if the requirements of s. 60.61 or s. 60.62, Stats., are satisfied.

(3) Unless specifically exempted by law, all cities, villages, towns and counties are required to comply with, and obtain all necessary permits under, local shoreland zoning ordinances.

(4) State agencies are required to comply with, and obtain all necessary permits under, local shoreland zoning ordinances if s. 13.48 (13), Stats., requires compliance with local zoning.

NOTE: Section 13.48 (13), Stats., requires compliance with the zoning ordinances of “the municipality in which construction takes place” for “every building, structure or facility that is constructed for the benefit of or use of the state, any state agency, board, commission or department.” However, as used in this statute, the term “state” is defined as a unit of government and does not include the inhabitants of the state. Buildings, structures or facilities that are constructed by a state agency for the benefit of the general public are not required to comply with local zoning ordinance under s. 13.48 (13), Stats.

(5) The construction, reconstruction, maintenance and repair of highways, bridges, and other transportation projects carried out under the direction and supervision of the Wisconsin department of transportation are not subject to local shoreland zoning ordinances, if s. 30.2022, Stats., applies.

(6) A Lower St. Croix riverway zoning ordinance that is adopted by a county in compliance with the requirements of s. 30.27, Stats., and ch. NR 118 may be adopted and administered as the county’s shoreland zoning ordinance for shorelands within the Lower St. Croix national scenic riverway. Cities and villages that annex shoreland areas after May 7, 1982 or incorporate shoreland areas after April 30, 1994 that are within the Lower St. Croix National Scenic Riverway may adopt and administer Lower St. Croix riverway zoning ordinances that comply with the requirements of s. 30.27, Stats., and ch. NR 118 as the city’s or village’s shoreland zoning ordinance for the annexed or incorporated shoreland areas. County, city and village zoning ordinances enacted pursuant to s. 30.27, Stats., and ch. NR 118 are not required to comply with the standards in this chapter if they comply with the standards in ch. NR 118 in effect at the time that the ordinance is adopted.

NR 115.03 Definitions. For the purpose of this chapter:

(1) “Access corridor” means a vegetated strip of land that extends through the primary shoreland buffer to provide pedestrian access to the waterfront.

(2) “Access site” means a lot or parcel of land providing public boat access or carry-in access.

(3) “Accessory structure” means a subordinate structure, the use of which is incidental to, and customarily found in connection with, the principal structure or use of the property. Accessory structures include detached garages, sheds, barns, gazebos, patios, decks (both detached and attached), swimming pools, hot tubs, fences, retaining walls, driveways, parking lots, sidewalks, detached stairways and lifts.

(4) “Agricultural practice” has the meaning found in s. 281.16 (1)(b), Stats.

NOTE: Section 281.16 (1)(b), Stats., defines “agricultural practice” to mean “beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; and vegetable raising.”

(5) “Campground” means a lot or parcel of land that is used for the purpose of providing sites for non-permanent overnight use by camping units and that has a valid campground permit issued under s. 254.47, Stats., and ch. HFS 178.

(6) “Camping unit” means a portable device or enclosure, no more than 400 square feet in area, including a tent, camping trailer, motor home, bus, van, pick-up truck, or other mobile recreational vehicle used as a temporary shelter for human habitation.

NOTE: The placement on a campsite of a device or enclosure for human habitation that is larger than 400 square feet is a “residential use,” as that term is defined in s. NR 115.03 (42).

(7) “Conditional use (or special exception)” means a use that is specifically listed in a shoreland zoning ordinance as either a conditional use or special exception and that may only be permitted if the board of adjustment, the county zoning agency, or the county board, as authorized by county ordinance, determines that the conditions specified in the shoreland zoning ordinance for that use are satisfied.

(8) “County zoning agency” means the committee or commission created or designated by the county board under s. 59.69 (2)(a), Stats., to act in matters pertaining to county planning and zoning.

(9) “Dam” means any artificial barrier in or across a watercourse that has the primary purpose of impounding or diverting water. A dam includes all appurtenant works, such as a dike, canal or powerhouse.

(10) “Department” means the Wisconsin department of natural resources.

(11) “Disabled” means having a physical or mental impairment that substantially limits one or more major life activities.

(12) “Dwelling unit” has the meaning found in s. 106.50 (1m)(i), Stats.

NOTE: Section 106.50 (1m)(i), Stats., defines “dwelling unit” to mean “a structure or that part of a structure that is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons, who are maintaining a common household, to the exclusion of all others.”

(13) “Expansion” means an addition to an existing structure that is horizontal, vertical or both.

(14) “Floodplain” means the land that has been or may be hereafter covered by flood water during the regional flood as shown on the county’s official floodplain zoning maps. The regional flood is based upon a statistical analysis of stream flow records available for the watershed or an analysis of rainfall and runoff characteristics in the general watershed region, or both. The flood frequency of the regional flood is once in every 100 years. In any given year, there is a 1% chance that the regional flood may occur.

NOTE: “Floodway” is defined in s. NR 116.03 (22) to mean “the channel of a river or stream, and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.”

(15) "Footprint" means the land area covered by a structure at ground level, measured on a horizontal plane. The "footprint" of a residence includes attached garages and porches, but excludes decks, patios, carports, roof overhangs, steps and landings outside of entrances.

(16) "Forest land" means any property on which trees exist, standing or fallen, alive or dead, that are primarily grown because they are valuable for forest products, watershed or wildlife protection or non-residential recreational uses in contrast to property where shade or ornamental trees are grown primarily because they are valuable for landscape, aesthetic, agricultural or similar purposes.

NOTE: A parcel of land need not be designated as managed forest land under ss. 77.80 to 77.91, Stats., or be enrolled in any other forest management program to be considered "forest land."

(17) "Forest management activities" means actions taken on forest land to establish, maintain or enhance a forest including planting trees, thinning and trimming trees, and harvesting timber and other forest products.

(18) "Foundation" means the underlying constructed base of a building or other structure, including pillars, footings, timber posts, concrete slabs and concrete and masonry walls.

(19) "Impervious surface" means an area that releases as runoff all or a large portion of the precipitation that falls on it, other than frozen soil. Examples of surfaces that typically are impervious are any paved, covered, compacted or structural surface that limits or impedes infiltration or causes additional runoff of surface water including the roofs of buildings and the surfaces of decks, patios, and gravel, crushed stone and paved driveways, parking areas and walkways.

(20) "In-fill area" has the meaning found in s. NR 151.002 (18).

Note: Section NR 151.002 (18) defines "in-fill area" as to mean " an undeveloped area of land located within existing urban service sewer areas, surrounded by already existing development or existing development and natural or mad-made features where development cannot occur.

(21) "Land disturbing activity" means any man-made alteration of the land surface resulting in a change in topography, existing vegetation or non-vegetative soil cover. Land disturbing activity includes filling and grading activities, the clearing and grubbing of vegetation, building foundation demolition, excavating, and pit trench dewatering.

(22) "Levee" means a continuous dike or embankment of earth constructed to prevent the flooding of certain areas of land.

(23) "Lift" means a mechanical device, either temporary or permanent, containing a mobile open top car, including hand or guard rails, a track upon which the open top car moves, and a mechanical device, which may or may not be motorized, to provide power to the open top car.

(24) "Lot" means a contiguous parcel of land with described boundaries that abuts, or has access via an easement or areas of common ownership to, a public street or road.

NOTE: For the purpose of the implementing this chapter, the area or width of a lot does not include any portion of the bed of a navigable body of water, as provided under s. NR 115.11.

(25) "Mitigation" means action taken to minimize the adverse impacts of development. Mitigation includes the installation of vegetative buffers, the removal of nonconforming structures from the shoreland buffer area, and the implementation of best management practices for erosion control or storm water management.

(26) "Mobile home park" means a lot or parcel of land that is occupied by 3 or more mobile homes, manufactured homes or park model homes and that has a valid mobile home park permit issued under s. 101.935, Stats., and ch. Comm 95.

(27) "Natural areas management activities" means actions taken to establish, maintain or enhance native plant communities or fish or wildlife habitat including forest management activities, prairie restoration, wetland restoration and removal of exotic species.

(28) "Navigable waters" has the meaning found in s. 281.31, Stats.

NOTE: Section 281.31 (2)(d), Stats., defines "navigable water" or "navigable waters" to mean "Lake Superior, Lake Michigan, all natural inland lakes within this state and all streams, ponds, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of the boundary waters, which are navigable under the laws of this state."

Section 281.31 (2m), Stats., also provides that, notwithstanding any other provision of law or administrative rule, a shoreland zoning ordinance required under s. 59.692, Stats., "does not apply to lands adjacent to farm drainage ditches if:

- (a) Such lands are not adjacent to a natural navigable stream or river;
- (b) Those parts of the drainage ditches adjacent to these lands were nonnavigable streams before ditching; and
- (c) Such lands are maintained in nonstructural agricultural use."

(29) "Nonconforming structure" means an existing, usable building or other structure whose location, dimensions or other physical characteristics do not conform to the standards in the current shoreland zoning ordinance but which was legally constructed or placed in its current location prior to the adoption of the ordinance or ordinance amendment that made it nonconforming.

(30) "Nonconforming use" means the use of an existing building, other structure or premises that does not conform to the land use restrictions in the current shoreland zoning ordinance but which was legally established prior to the adoption of the ordinance or ordinance amendment that made it nonconforming.

(31) "Non-permanent campsite" means a site in a campground that is used by camping units, none of which occupies the site for more than 120 days in any 12-month period, and is not used for a residential use.

(32) "Open fence" means a fence that does not have privacy slats, pickets or other solid coverings that block the view or flow of air through the fence, and that allows wildlife to move under, over or through the fence.

(33) "Ordinary high-water mark" means the point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognized characteristic.

(34) "Ordinary maintenance and repair" means any work done on a structure that does not constitute structural alteration, replacement or expansion and does not involve the alteration, replacement or removal of any portion of a building's foundation. The term "ordinary maintenance and repair" includes repair of cracks in foundations, the application of waterproof coatings to foundations, and the replacement of a flat roof with a pitched roof on a nonconforming principal structure, provided there is no increase in the useable living space within a structure as a result of the roof replacement, unless expansion is allowed under s. NR 115.19 (4)(c).

(35) "Porch" means a covered entrance to a building, usually with a separate roof.

(36) "Primary shoreland buffer" means a vegetated buffer strip running parallel to the ordinary high-water mark, and extending inland from the ordinary high-water mark.

(37) "Principal structure" means the main building or other structure on a lot or parcel of land that is utilized for the property's principal use, including attached garages and porches on residential structures.

(38) "Professional natural resource manager" means a person with a college degree in a field of study related to natural resource management, or equivalent work experience, who is employed as a natural resource manager or who advises clients on natural resource management issues.

(39) "Reasonable accommodation" means allowing a disabled person to deviate from the strict requirements of the county's zoning ordinances if an accommodation is necessary and reasonable, in order not to unlawfully discriminate against the disabled person and to allow them equal housing opportunity.

NOTE: Federal courts have interpreted the "reasonable accommodations" requirement in the Federal Fair Housing Act to mean that an accommodation is reasonable "if it does not cause any undue hardship or fiscal or administrative burdens on the municipality, or does not undermine the basic purpose that the zoning ordinance seeks to achieve." *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1186 (E.D.N.Y. 1993)

(40) "Replacement" means the rebuilding, reconstructing or replacing of all or substantially all of the structural components of a building or other structure.

(41) "Residence" means any structure, or portion thereof, that is used for human habitation, regardless of whether the structure is constructed on-site or moved to the site after manufacture.

(42) "Residential use" means the use of any structure, or portion thereof, as a residence, or the occupancy of a campsite in a campground by the same camping unit or other structure for more than 120 days in any 12-month period.

(43) "Secondary shoreland buffer" means a vegetated buffer strip extending inland from the primary shoreland buffer.

(44) "Shoreland setback area" has the meaning found in s. 59.692 (1)(bn), Stats.

NOTE: Section 59.692 (1)(bn), Stats., defines "shoreland setback area" to mean "an area in a shoreland that is within a certain distance of the ordinary high-water mark in which the construction or placement of buildings or structures has been limited or prohibited under an ordinance enacted under this section."

(45) "Shorelands" and "shoreland zone" have the meaning found in s. 59.692 (1)(b), Stats.

NOTE: Section 59.692 (1)(b), Stats., defines "shorelands" to mean "the area within the following distances from the ordinary high-water mark of navigable waters, as defined under s. 281.31 (2)(d):

1. One thousand feet from a lake, pond or flowage. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake.
2. Three hundred feet from a river or stream or to the landward side of the floodplain, whichever distance is greater."

(46) "Shoreland-wetland zoning district" means a zoning district, created in compliance with the requirements of s. NR 115.07, comprised of shorelands that are designated as wetlands on Wisconsin wetland inventory maps prepared by the department.

(47) "Structural alteration" means the replacement or alteration of one or more of the structural components of two or more of a building's exterior walls, or 25% of the footprint of other types of structures, but does not include any expansion of the structure.

(48) "Structural component" means any part of the framework or supporting structure of a building or other structure. The structural components of a building's exterior walls include the vertical studs, top and bottom plates, and non-load-bearing walls, such as the wall at the gable end of a one-story house. Wall-coverings, such as siding on the exterior and dry wall on the interior, are not included in the definition of "structural component."

(49) "Structure" means any man-made object with form, shape and utility, that is constructed or otherwise erected, attached to or permanently or temporarily placed, either upon the ground, a river bed, stream bed or lake bed or upon another structure. For the purposes of this chapter, the term "structure" includes camping units, swimming pools, hot tubs, patios, decks and retaining walls, but does not include landscaping or earthwork including graded areas, filled areas, ditches, berms, or earthen terraces. The term "structure" does not include small objects that are easily moved by hand, such as canoes, kayaks, lawn chairs, portable grills, portable picnic tables, temporary snow fences, small temporary fences around individual plants or small groups of plants to prevent animal herbivory, bird feeders, birdhouses and birdbaths.

(50) "Variance" means an authorization granted by the board of adjustment to construct, alter or use a building or other structure or use a parcel of land in manner that deviates from the requirements of a shoreland zoning ordinance.

(51) "Wetland" has the meaning found in s 23.32 (1), Stats.

NOTE: Section 23.32 (1), Stats., defines "wetland" to mean "an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions."

(52) "Wetland buffer" means an area in a shoreland that is within a specified distance of the boundary of wetlands in which land disturbing activities are prohibited.

NR 115.05 Shoreland zoning districts. (1) **PURPOSE.** Counties shall adopt shoreland and shoreland-wetland zoning districts to achieve the purposes in ss. 281.31 (1) and (6), Stats.

(2) **ESTABLISHMENT OF APPROPRIATE ZONING DISTRICTS.** Counties shall adopt shoreland zoning ordinances that establish, at a minimum, a shoreland-wetland zoning district that is regulated in compliance with the requirements in s. NR 115.07. If counties choose to establish other types of land use districts in shorelands (such as general purpose, agricultural, industrial, commercial, residential, recreational, or conservancy districts), such districts shall be established in, or incorporated by reference into, the county's shoreland zoning ordinance adopted under s. 59.692, Stats.

NOTE: Section 56.692 (5), Stats., provides that an ordinance enacted under s. 59.692, Stats., supersedes all provisions of an ordinance enacted under s. 59.69, Stats., that relate to shorelands, which means that land use districts established in a comprehensive county zoning ordinance adopted under s. 59.69, Stats., will only apply in shorelands if those districts are also established in the county's shoreland zoning ordinance adopted under s. 59.692, Stats. However, county construction site erosion control and storm water management zoning ordinances adopted under s. 59.693, Stats., are not superseded by an ordinance enacted under s. 59.692, Stats.

NR 115.07 Shoreland-wetland zoning. (1) COUNTY REVIEW OF PRELIMINARY WETLAND INVENTORY MAPS. Before the department prepares final Wisconsin wetland inventory maps:

(a) The department shall transmit to the county zoning agency copies of preliminary wetland inventory maps for that county.

(b) The county zoning agency shall have 90 days to review the preliminary maps unless the review period is extended by written approval of the department, but in no case shall the review period extend for more than 180 days.

(c) The county zoning agency shall hold a public hearing to solicit public comments on the preliminary wetland inventory maps. Notice of the time and place of the hearing shall be mailed to the town clerk of each town in the county and shall be published as a class 1 notice, under ch. 985, Stats.

(d) On or before the last day of the review period, the county zoning agency shall return the preliminary maps to the department. If the county zoning agency believes that the preliminary maps are inaccurate, discrepancies shall be noted on the maps with an accompanying narrative explaining the problem areas.

(e) The department shall schedule a meeting with the county zoning agency within 30 days of the return of the preliminary maps if the county zoning agency has indicated that they believe that there are inaccuracies on the maps.

(f) After meeting with the county zoning agency to discuss apparent map inaccuracies, the department shall, at department expense, consult available soil survey maps and conduct on-site inspections, if appropriate, in order to evaluate the county recommendations, and shall then prepare the final Wisconsin wetland inventory maps for that county.

(g) The adoption of a final Wisconsin wetland inventory map is a final decision of the department and may be reviewed as provided in ch. 227, Stats.

(2) COUNTY ADOPTION OF SHORELAND-WETLAND ZONING. (a) Each county shall, within 6 months after receipt of final Wisconsin wetland inventory maps, or Wisconsin wetland inventory map amendments, for that county from the department, zone all shorelands within the county that are designated as wetlands on the Wisconsin wetland inventory maps, in a shoreland-wetland zoning district.

(b) Ordinance text and map amendments creating shoreland-wetland zoning districts shall be referred to the county zoning agency for public hearing as required by s.59.69 (5)(e) 2., Stats.

(c) The appropriate regional office of the department shall be provided with a copy of the proposed text and map amendments and with written notice of the public hearing at least 10 days prior to such hearing.

(3) PERMITTED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Within shoreland-wetland zoning districts, counties shall permit the following uses subject to the general requirements of ss. NR 115.05 to 115.21, the provisions of chs. 30 and 31, Stats., and other state and federal laws, if applicable:

(a) Hiking, fishing, trapping, hunting, swimming and boating.

(b) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops and that does not involve filling, flooding, draining, dredging, ditching, tiling or excavating.

(c) The practice of silviculture, including the planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done except as required to construct and maintain roads which are necessary to conduct silviculture activities, which cannot as a practical matter be located outside the wetland, and which are designed and constructed to minimize the adverse impact upon the natural functions of the wetland, or except as required for temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact on the conduct of silvicultural activities if not corrected.

NOTE: Local units of government, in the development and application of ordinances which apply to shoreland areas, must consider other programs of statewide interest and other state regulations affecting the lands to be regulated, i.e. regulations and management practices applicable to state and county forests and lands entered under the forest cropland program in subchapter I of ch. 77, Stats., and the managed forest lands program in subchapter VI of ch. 77, Stats.

(d) The pasturing of livestock and the construction and maintenance of fences, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(e) The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding or artificial drainage of the wetland through ditching, tiling, dredging or excavating except that flooding, dike and dam construction, and ditching shall be allowed for the purpose of growing and harvesting cranberries. The maintenance and repair of existing drainage systems (such as ditching and tiling) shall be permitted. The construction and maintenance of roads shall be permitted if the roads are necessary for agricultural cultivation, cannot as a practical matter be located outside the wetland, and are designed and constructed to minimize the adverse impact upon the natural functions of the wetland.

(f) The construction and maintenance of duck blinds provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(g) The construction and maintenance of nonresidential structures used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals, or used solely for some other purpose which is compatible with wetland preservation if such building cannot as a practical matter be located outside the wetland, not to exceed 500 square feet, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(h) The construction and maintenance of piers, docks and walkways, including those built on pilings, provided that no filling, flooding, dredging, draining, ditching, tiling or excavating is done.

(i) The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and private wildlife habitat areas, provided that no filling is done and that any private wildlife habitat area is used exclusively for that purpose. The owner or operator of a new private recreation or wildlife area to be located in a shoreland-wetland zoning district shall be required to notify the county zoning agency of the proposed project before beginning construction. Ditching, excavating, dredging, dike and dam construction shall be allowed in wildlife refuges, game preserves, and private wildlife habitat areas for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

(j) The construction and maintenance of electric, gas, telephone, water and sewer transmission and distribution lines, and related facilities, which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

NOTE: Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

(k) The construction and maintenance of railroad lines which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

(l) The maintenance, repair, replacement, and reconstruction of existing town and county highways and bridges.

(4) PROHIBITED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Any use not permitted in sub. (3) is prohibited in a shoreland-wetland zoning district unless the wetland or portion thereof is rezoned by amendment of the county shoreland zoning ordinance in accordance with s. 59.69 (5)(e), Stats., and the procedures outlined in sub. (5).

(5) REZONING OF SHORELAND-WETLAND ZONING DISTRICTS. (a) Official ordinance amendments are required for any change in shoreland-wetland zoning. Such amendments shall be made upon petition in accordance with provisions of s. 59.69 (5)(e), Stats.

(b) The county clerk shall submit a copy of every petition for an amendment to a shoreland-wetland zoning district to the appropriate regional office of the department within 5 days of the filing of such petition with the clerk.

(c) All proposed text and map amendments to shoreland-wetland zoning districts shall be referred to the county zoning for a public notice and hearing as required by s. 59.69 (5)(e) 2., Stats. The appropriate district regional office of the department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

(d) In order to ensure that the shoreland protection objectives found in s. 281.31, Stats., will be accomplished by the county shoreland zoning ordinance, a county shall not rezone a shoreland-wetland zoning district, or portion thereof, if the proposed rezoning may result in a significant adverse impact upon any of the following:

1. Storm and flood water storage capacity;
2. Maintenance of dry season stream flow, or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
3. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
4. Shoreline protection against soil erosion;
5. Fish spawning, breeding, nursery or feeding grounds;
6. Wildlife habitat; or
7. Areas of special recreational, scenic or scientific interest, including scarce wetland types.

(e) If the department determines that the proposed rezoning may have a significant adverse impact upon any of the criteria listed in par. d., the department shall notify the county zoning agency of its determination either prior to or during the public hearing held on the proposed amendment.

(f) As soon as possible after holding a public hearing, the county zoning agency shall submit its written findings and recommendations to the county board. Said findings shall outline the reason for the agency's recommendations. After receipt of the county zoning agency's findings and recommendations, the board may approve or disapprove of the proposed amendment.

(g) The county shall send to the appropriate regional office of the department:

1. A copy of the county zoning agency's findings and recommendations on the proposed amendment within 10 days after the submission of those findings and recommendations to the county board; and

2. Written notice of the board's decision on the proposed amendment within 10 days after it is issued.

(h) If the county board approves of the proposed amendment and the department determines, after review as required by s. NR 115.17 (2)(c), that the county shoreland zoning ordinance if so amended would no longer comply with the requirements of s. 59.692, Stats., and this chapter, the department shall, after notice and hearing, adopt a complying ordinance for the county, under s. 59.692 (6), Stats.

(i) If the department has notified the county zoning agency that a proposed amendment may have a significant adverse impact upon any of the criteria listed in par. (d), that proposed amendment, if approved by the county board, shall not become effective until more than 30 days have elapsed since written notice of the county board's approval was mailed to the department, as required by par. (g). If within the 30-day period the department notifies the county board that the department intends to adopt a superseding shoreland zoning ordinance for the county under s. 59.592 (6), Stats., the proposed amendment shall not become effective while the ordinance adoption procedure is proceeding, but shall have its effect stayed until the s. 59.692 (6), Stats., procedure is completed or otherwise terminated.

NR 115.09 Land division review. (1) **PURPOSE.** Counties shall adopt land division review standards to achieve the purposes of ss. 281.31 (1) and (6), Stats., by ensuring that lots and other parcels of land created in the shoreland zone meet or exceed applicable minimum lot size or development density standards in order to allow for adequate room for storm water runoff control, private on-site wastewater treatment systems, and primary and secondary shoreland buffers; and to limit direct and cumulative impacts of shoreland development on water quality; near-shore aquatic, wetland, and upland wildlife habitat; and natural scenic beauty.

(2) **GENERAL.** All divisions of land in the shoreland zone that create, combine or reconfigure one or more lots or parcels of land that are 5 acres in size or smaller shall be reviewed by the county and shall satisfy the applicable minimum lot size and development density standards in s. NR 115.11.

(3) **NAVIGABLE BODIES OF WATER WITHIN LOTS.** For new land divisions in the shoreland zone, a lot or parcel may not be created that is divided by a navigable stream unless each portion of the lot or parcel meets the minimum lot size requirements and development density standards in s. NR 115.11.

NOTE: Section NR 115.09 (3) does not affect the use of existing lots or parcels that are divided by a navigable stream, and does not prohibit the sale or transfer of a lot or parcel divided by a navigable stream or a portion of a lot or parcel that is separated from the remainder of the lot or parcel by a navigable stream.

(4) SUBSTANDARD LOTS IN COMMON OWNERSHIP. Counties may adopt standards to regulate lots in common ownership that do not comply with the minimum lot size and development density standards of s. NR 115.11.

NR 115.11 Lot size and development density. (1) PURPOSE. Counties shall adopt lot size and development density standards to achieve the purposes listed in s. NR 115.09 (1).

(2) GENERAL. (a) *Minimum lot or parcel size.* Except as provided in sub. (8) or (9), or where a variance has been granted by the county board of adjustment, counties may not permit the construction or placement of a structure on a lot or parcel of land in the shoreland zone unless the lot or parcel complies with the applicable lot size and development density standards in subs. (3) to (7).

Note: Outlots and other unbuildable parcels that do not meet the minimum lot size or development density standards in this section may be created, as part of a subdivision plat or certified survey map, provided that their use is clearly restricted to nonstructural uses.

(b) *Beds of navigable waters excluded.* In calculating the area or width of a lot or parcel, the beds of navigable waters shall not be included.

(c) *Measuring lot width.* The width of a lot or parcel is the distance between the side lot boundaries measured as follows:

1. For a lot or parcel abutting navigable waters, the width shall be measured at both of the following locations:

a. On a line connecting the side lot boundaries that is perpendicular to the mean bearing of the side lot boundaries and that intersects one or both of the side lot boundaries at the point where the side lot boundary intersects the ordinary high-water mark.

b. On a line connecting the side lot boundaries that is perpendicular to the mean bearing of the side lot boundaries and that intersects one or both of the side lot boundaries at the point where the side lot boundary intersects the shoreland setback distance required by the county for that property.

2. For an inland lot or parcel that does not abut navigable waters, the width shall be measured on a line connecting the side lot boundaries that is perpendicular to the mean bearing of the side lot boundaries and that intersects one or both of the side lot boundaries at the point where the side lot boundary intersects the roadway setback for that property or at the point required by the county for that property.

[Diagram will be inserted to illustrate 1. and 2.]

Note: For example, if one side lot boundary has a bearing of north 20 degrees east and the other side lot boundary has a bearing of north 10 degrees west, the mean (average) bearing of the two side lot boundaries would be north 15 degrees east. Whether or not the proposed lot or parcel satisfies the minimum lot width and development density standards in this section would be determined by measuring the length of lines between the side yard boundaries on a bearing perpendicular to the mean bearing of the side lot boundaries: in this case, measuring the length of the lines with a bearing of north 75 degrees west that intersect the side lot boundaries at the locations listed in s. NR 115.11 (2)(c) 1. or 2.

(d) *Calculating maximum density for condominiums.* Any lot or parcel of land in the shoreland zone owned by a condominium association shall have a total area equal to the sum of the minimum area standards in pars. (3), (4) and (5) for each of the residences, campsites or mobile home sites that are proposed to be included in the condominium plat.

(3) **RESIDENTIAL USES.** Except as provided in sub. (4), (5) or (8), lots or parcels of land for residential uses in the shoreland zone may not be created unless they satisfy the following minimum lot size standards:

(a) *Not served by public sanitary sewer.* Lots or parcels not served by public sanitary sewer shall:

1. Have a minimum area of 20,000 square feet and a minimum width of 100 feet for each single-family residence or duplex.

2. Have a minimum area of 20,000 square feet and a minimum width of 100 feet for each residential building and an additional minimum area of 7,500 square feet and an additional minimum width of 40 feet for each dwelling unit exceeding two dwelling units per building.

(b) *Served by public sanitary sewer.* Lots or parcels served by public sanitary sewer shall:

1. Have a minimum area of 10,000 square feet and a minimum width of 65 feet for each single-family residence or duplex.

2. Have a minimum area of 10,000 square feet and a minimum width of 65 feet for each residential building and an additional minimum area of 3,000 square feet and an additional minimum width of 30 feet for each dwelling unit exceeding two dwelling units per building.

(4) **CAMPGROUNDS.** Counties may only permit the construction of a new campground, or the expansion of an existing campground on a lot or parcel of land in the shoreland zone if the campground satisfies all of the following minimum standards:

(a) *Density.* Campgrounds shall have a minimum area of 5 acres for the first 10 campsites, regardless of whether those campsites are all non-permanent campsites, all residential use campsites, or a combination. The density of additional non-permanent campsites shall meet the standards in s. HFS 178.06 (4), and density of additional residential use campsites shall meet the applicable standards in sub. (3)(a) or (b).

(b) *Lot or parcel width.* Campgrounds abutting navigable waters shall have a minimum width of 200 feet at the ordinary high-water mark, plus an additional 100 feet of width at the ordinary high-water mark for every 10 non-permanent campsites, and an additional 65 feet of width at the ordinary high-water mark for each residential use campsite if served by a public sanitary sewer or an additional 100 feet of width at the ordinary high-water mark for each residential use campsite if not served by a public sanitary sewer.

(c) *Non-permanent campsites.* Except for a legal nonconforming structure, a camping unit may not be parked, placed or stored on a non-permanent campsite for more than 120 days in any 12-month period. No structure other than a camping unit may be constructed or placed on a non-permanent campsite.

Note: The placement on a campsite of a device or enclosure that is larger than 400 square feet or that remains on a campsite for more than 120 days in any 12-month period is a "residential use," as that term is defined in s. 115.03 (42).

(d) *Residential use campsites.* Except for the continued use or replacement of a legal nonconforming structure in compliance with the standards in s. NR 115.21, counties may not permit a structure to be constructed, placed or stored on a residential use campsite unless the campground meets the campground density standards in par. (a) and the campsite meets the applicable size standards for residential structures in sub. (3)(a) or (b).

NOTE: Mobile homes, camping units, recreational vehicles, storage sheds, decks, porches and other similar structures are regulated under the county's shoreland zoning ordinance as "structures," as that term is defined in s. NR 115.03 (49), regardless of whether they are subject to taxation as real property or personal property or are exempt from property taxes.

(5) **MOBILE HOME PARKS.** Counties may only permit the construction of a new mobile home park or the expansion of an existing mobile home park on a lot or parcel of land in the shoreland zone if the mobile home sites in the mobile home park satisfy the applicable standards in sub. (3)(a) or (b) for each site.

NOTE: The term "mobile home park" includes all parks that are regulated under s. 101.935, Stats., and ch. Comm 95, including manufactured home parks.

(6) **KEYHOLE LOTS.** The use of a riparian lot or parcel to provide access to navigable waters for the benefit of inland lots or inland parcels may not be permitted in situations where an easement or other legal right to cross a lot or parcel abutting navigable waters is proposed to be granted or has been granted, unless a conditional use permit is granted by the county and the lot or parcel abutting navigable waters has a minimum area of 20,000 square feet and a minimum width of 100 feet. Counties may also require a conditional use permit and require that a lot or parcel abutting navigable waters meet applicable minimum lot size requirements or development density limitations in situations where a lot or parcel abutting navigable waters is proposed to be used to provide multi-family access to navigable waters for 2 or more families who jointly own a lot or parcel abutting navigable waters.

Note: Section 30.133, Stats., prohibits the conveyance, by easement or by a similar conveyance, of any riparian right after April 9, 1994, except for the right to cross the land in order to have access to navigable water (which does not include the right to place or maintain a pier or wharf or to exercise other riparian rights). This statute does not affect the right of a riparian property owner to give permission for someone to enter his or her property as long as the permission is not conveyed in the form of an interest in property.

(7) **OTHER USES.** A lot or parcel of land for uses other than those specified in subs. (3) to (6) may not be created unless the lot or parcel has a minimum area of 20,000 square feet and a minimum width of 100 feet.

(8) **ALTERNATIVE DEVELOPMENT.** Counties may apply to the department for the approval of standards for alternative forms of development with reduced lot sizes and development densities that are different than the standards in subs. (3) to (7). Proposed standards for planned unit developments, cluster developments, conservation subdivisions, and other similar alternative forms of development shall include, at a minimum, a required shoreland setback of more than 75 feet and a larger primary buffer than is required in s. NR 115.15(3). Applications filed by counties under this paragraph shall demonstrate to the department how the proposed standard will be as effective or more effective than the standards in subs. (3) to (7) in achieving the purposes of ss. 281.31 (1) and (6), Stats., to control and prevent water pollution, prevent further degradation of near-shore aquatic, wetland and upland wildlife habitat, and preserve the natural scenic beauty of navigable waters.

(9) **SUBSTANDARD LOTS.** Except for structures allowed under ss. NR 115.13 (5)(a), (b), and (f), or the structural alteration, replacement or expansion of a nonconforming structure that complies with the standards in s. NR 115.21, counties may not permit the construction or placement of a structure on a lot or parcel of land in the shoreland zone that does not comply with the standards in this section, unless the lot or parcel is a lot or parcel of record that complied with applicable standards in effect at the time that the lot or parcel was recorded at the county register of deeds office, and the proposed construction or placement of a structure will comply with the shoreland setback standards in s. NR 115.13, the shoreland vegetation standards in s. NR 115.15, the impervious surface standards in s. NR 115.17, and the land disturbing activity standards in s. NR 115.19.

NR 115.13 Shoreland setbacks. (1) **PURPOSE.** Counties shall adopt shoreland setback standards to achieve the purposes of ss. 281.31 (1) and (6), Stats., by controlling the density and location of development in order to allow adequate room between structures and navigable waters for primary shoreland buffers, secondary shoreland buffers, and for the infiltration of storm water runoff; and to limit the direct and cumulative impacts of shoreland development on water quality; near-shore aquatic, wetland, and upland wildlife habitat; and natural scenic beauty.

(2) **GENERAL.** (a) *Minimum setback.* Except as provided in subs. (4) to (6) or s. NR 115.21, or where a variance has been granted by the county board of adjustment, all buildings and other structures shall be setback a minimum of 75 feet from the ordinary high-water mark of navigable waters. This general standard requires that a setback of at least 75 feet from the ordinary high-water mark of navigable waters be enforced for all residences and other structures, including mobile recreational vehicles, buses, vans, house boats and ice fishing shanties that are parked, placed or stored on shorelands, regardless of whether or not the structure has wheels under it or is designed to float.

NOTE: A house boat or other structure that is licensed as a boat is still regulated under the county's shoreland zoning ordinance as a "structure," as that term is defined in s. NR 115.03 (49).

(b) *Measuring setback.* The shoreland setbacks shall be measured on a horizontal plane from the point of a structure that is nearest to the ordinary high-water mark, including roof overhangs and any cantilevered portions of the structure, unless, prior to the August 24, 2004, a county has measured shoreland setbacks to the nearest point of the foundation or base of a structure instead of measuring to roof overhangs. Such a county may continue to measure the shoreland setback on a horizontal plane from the foundation or base of a structure at the point that is nearest to the ordinary high-water mark, provided that the county's shoreland zoning ordinance also requires any cantilevered portion of a structure other than roof overhangs to be setback at least 75 feet from the ordinary high-water mark and limits roof overhang width to no more than 3 feet.

Note: Porches are considered part of the footprint of a building. The width of porch roofs is not limited to 3 feet under s. NR 115.13 (2)(b), regardless of how a county measures the shoreland setback. However, if a county measures to the foundation or base of a structure to determine whether the structure complies with the required shoreland setback, the roof overhang on a porch on such a structure may not exceed 3 feet in width.

(3) **PERMIT REQUIRED.** Counties shall adopt a zoning permit system for the construction, placement, replacement, expansion, structural alteration, and moving of buildings and other structures in the shoreland zone, including structures that are exempt, or may be exempt, from the shoreland setback standards under subs. (4) and (5). However, counties may adopt ordinance provisions that allow specific structures that are exempt, or may be exempt, from the shoreland setback standards under subs. (4) and (5) to be constructed or placed without the issuance of a county zoning permit if applicable standards in subs. (4) and (5) are complied with.

Note: Structures that are proposed to be constructed or placed in wetland areas, or in areas immediately adjacent to wetlands, lakes, streams and rivers, are also potentially subject to regulation under local floodplain zoning ordinances and state and federal laws, such as chs. NR 103, 216 and 151 and section 404 of the federal Clean Water Act.

(4) **STRUCTURES EXEMPTED BY OTHER LAWS.** The following structures are exempt from the shoreland setback standards in sub. (2) if all of the applicable conditions that are listed in the following paragraphs are satisfied:

(a) *Open sided and screened structures.* Open sided and screened structures such as gazebos, decks, patios, and screen houses, that satisfy the requirements in s. 59.692 (1v), Stats., are exempt from the shoreland setback standards in sub. (2).

(b) *Fishing rafts.* Fishing rafts that are authorized on the Wolf River and Mississippi River under s. 30.126, Stats., and that are pulled up onto the shore in the fall for winter storage but are moved onto the water in the spring are exempt from the shoreland setback standards in sub. (2).

(c) *Satellite dishes and antennas.* Satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are two meters or less in diameter are exempt from the shoreland setback standards in sub. (2).

NOTE: Under 47 CFR 1.4000 and 25.104, state and local regulations that would impair the installation, maintenance or use of certain satellite dishes or antennas are prohibited.

(d) *Reasonable accommodations for disabled persons.* The construction or expansion of structures that allow equal access to housing for a disabled person who is entitled to reasonable accommodations under the Americans with Disabilities Act, the federal Fair Housing Act or the Wisconsin Open Housing Law are exempt from the shoreland setback standards in sub. (2). Fishing piers and other facilities for use by disabled persons may also be allowed within the shoreland setback area of parks, resorts and campgrounds to provide disabled persons with an equal opportunity to participate in waterfront recreational activities provided that the facility is designed and located to minimize any adverse impact on water quality, fish and wildlife habitat and natural scenic beauty.

NOTE: Counties may not issue variances to disabled persons unless the statutory variance criteria in s. 59.694 (7)(c), Stats., are satisfied for the lot in question.

(5) **STRUCTURES THAT COUNTIES MAY EXEMPT.** Counties may exempt the following structures from the shoreland setback standards in sub. (2) if all of the applicable conditions that are listed in the following paragraphs are satisfied:

(a) *Chapter 30 and 31 Structures.* Structures that are regulated under ch. 30 or ch. 31, Stats., such as piers, rip-rap, biological shore control structures, fish cribs, boat shelters, boat ramps, boats that are anchored or moored waterward of the ordinary high-water mark, and dams and bridges and their appurtenant structures that have required state and federal permits, or meet statutory or administrative rule standards that do not require a state or federal permit, may be exempt from the shoreland setback standards in sub. (2).

(b) *Walkways, stairways, and lifts.* Walkways, stairways and lifts that satisfy all of the following conditions may be exempt from the shoreland setback standards in sub. (2):

1. Steep, rocky, eroding, unstable or wet site conditions require placement of a walkway, stairway or lift to provide pedestrian access to navigable waters.

2. Only one stairway may be allowed on a lot or parcel of land with up to 5 dwelling units. For properties with more than 5 dwelling units, one additional stairway may be allowed for each additional 5 dwelling units. A lift may be allowed where necessary to provide reasonable accommodation for disabled persons. When practicable, the lift shall be mounted onto or be placed immediately adjacent to any existing stairway.

3. Any filling, grading or excavation that is proposed for the installation of a walkway, stairway or lift shall meet the requirements of s. NR 115.19. Walkways shall be constructed of materials that will minimize storm water runoff to the extent practicable, and vegetation shall be established after construction or placement and before the onset of winter, and shall be maintained, to stabilize all land disturbed during the construction or placement of the walkway, stairway or lift.

4. The width of the walkway, stairway or lift may not exceed 4 feet.

5. Landings, if needed, may be located at the top of the stairway or lift, the bottom of the stairway or lift, and where a change in stairway direction is needed. Landings shall not exceed 40 square feet in size. One small bench per landing may be allowed.

6. Canopies, roofs and walls are prohibited. Open railings may be allowed if required for safety.

(c) *Signs and flagpoles.* Water dependent informational signs with public health, safety or regulatory information that are no larger than necessary to accommodate the information that needs to be displayed may be exempt from the shoreland setback standards in sub. (2). Other informational signs and flagpoles may be exempt from the shoreland setback standards in sub. (2) if the county adopts standards for signs, or flagpoles, or both, and associated lighting that preserve wildlife habitat and natural beauty.

(d) *Water quality improvement structures.* Structures that are for the purpose of improving water quality, such as livestock runoff containment structures, and that satisfy all of the following conditions, may be exempt from the shoreland setback standards in sub. (2):

1. The structure complies with agricultural runoff management performance standards in ss. NR 151.01 to 151.095, or is a necessary component of a conservation plan or a water quality improvement plan approved by the department or the county land conservation department.

2. There is no alternative site outside of the shoreland setback area for the construction of the structure or the alternative site outside of the shoreland setback area is not economically viable because it would cost 115% or more than construction in the shoreland setback area.

3. The property owner preserves and maintains, or establishes and maintains, vegetation within 35 feet of the ordinary high-water mark of the navigable waters in the area between the structure and the navigable waters, or if the structure is within 35 feet of the ordinary high-water mark, to the maximum extent practicable.

(e) *Wildlife and fisheries habitat improvement structures.* Structures that are for the purpose of improving, restoring or rehabilitating wildlife or fisheries habitat, such as an aeration pump, that are a necessary component of a wildlife or fisheries management plan approved by the department or the county land conservation department and that have no feasible alternative site outside of the shoreland setback area may be exempt from the shoreland setback standards in sub. (2).

(f) *Erosion control structures.* Erosion control structures that are located entirely above the ordinary high-water mark, such as retaining walls, that are determined by the county to be the only method to address significant on-going erosion or to provide necessary stability for existing principal structures may be exempt from the shoreland setback standards in sub. (2).

(g) *Marine fuel dispensing systems.* Marine fuel dispensing systems, including marine fuel storage tanks, that meet all of the applicable standards in ss. Comm 10.415 and 10.42 may be exempt from the shoreland setback standards in sub. (2).

(h) *Public access sites.* Parking areas at public access sites that have no other feasible location on the lot or parcel of land outside of the shoreland setback area and that employ best management practices to infiltrate or otherwise control storm water runoff from the parking area are exempt from the shoreland setback standards in sub. (2). Privacy fences at public access

sites that are along the perimeter of the property may be exempt from the shoreland setback standards in sub. (2).

(i) *Roads and driveways.* Roads and driveways that have no other feasible location to provide access to the lot or parcel of land and that employ best management practices to infiltrate or otherwise control storm water runoff from the road or driveway may be exempt from the shoreland setback standards in sub. (2).

(j) *Utilities.* Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with ch. Comm 83, and other utility structures that have no feasible alternative location outside of the shoreland setback area and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure may be exempt from the shoreland setback standards in sub. (2).

NOTE: Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

(k) *Agricultural fences.* Open fences on land used for agricultural practices that meet the standards of chs. 30 and 90, Stats., and that are not more than 6 feet tall may be exempt from the shoreland setback standards in sub. (2).

(l) *Captive wild animal fences.* Fences for farm-raised deer that meet the requirements of s. 90.20 or 90.21, Stats., or fences at department-approved captive wild animal farms and wild fur farms that are licensed under ch. 169, Stats., may be exempt from the shoreland setback standards in sub. (2).

(m) *Open fences.* Open fences that are located in the secondary shoreland buffer, and that are no more than 4 feet tall may be exempt from the shoreland setback standards in sub. (2).

NOTE: Open fences are only allowed within the primary buffer if they fall within the exemption for agricultural fences in s. NR 115.13 (5)(k) or captive wild animal fencing in s. NR 115.13 (5)(l).

(n) *Sidewalks, and steps and landings at entrances.* Counties may exempt from the shoreland setback standards in sub. (2) one sidewalk per building that is 4 feet wide or narrower, and steps and landings at building entrances that are no wider than the door to which they are adjacent.

(o) *Public walkways.* Counties may exempt from the shoreland setback standards in sub. (2) walkways near navigable waters that are open to the public within the shoreland setback area. These public walkways shall be constructed of materials that will minimize storm water runoff, to the extent practicable, and the entity that maintains the walkway shall employ best management practices to infiltrate or otherwise control storm water runoff that can not be prevented.

(6) **SETBACK REDUCTION PROCESS.** (a) Counties may permit a reduced shoreland setback for a principal residential structure if all of the following conditions are satisfied:

1. There is not a location available on the lot or parcel of land to build a principal residential structure that is 30 feet deep or larger, in compliance with shoreland setback standards.

2. The lot or parcel of land has a minimum area of at least 7,000 square feet and is a legal lot or parcel of record.

3. The lot or parcel has a site for a reasonably-sized residence that does not include any land in a wetland, floodway, the primary shoreland buffer, a public right-of-way or the bed of a navigable body of water.

4. The reduced shoreland setback shall not be less than 35 feet from the ordinary high-water mark.

5. The total footprint of the principal structure and any attached or detached garage that is located, or proposed to be located, less than 75 feet from the ordinary high-water mark may not exceed the maximum total square footage of the footprint specified in Appendix A for the proposed reduced shoreland setback.

(b) If all of the conditions of par. (a) are met, either of the following processes may be used to reduce the shoreland setback for a principal residential structure:

1. 'Setback reduction formula.' First, the roadway setback shall be reduced as much as is allowed by the governmental entity that has jurisdiction over the abutting street or road. Second, the shoreland setback may be reduced in order to create a 30-foot deep building location.

2. 'Setback averaging.' The shoreland setback may be reduced to the average shoreland setback of the principal residential structures on each side of the proposed site if there are adjacent principal residential structures located on both sides of, and within 150 feet of the proposed site of the residence and the two adjacent residential structures are located less than 75 feet from the ordinary high-water mark.

(c) Counties may apply to the department for the approval of an alternative setback reduction formula that is different than the formula described in par. (b) 1. Applications filed by counties under this paragraph shall demonstrate to the department how the proposed formula will be as effective or more effective than the formula in par. (b) 1. in achieving the purposes of ss. 281.31 (1) and (6), Stats., to control and prevent water pollution, prevent further degradation of near-shore aquatic, wetland and upland wildlife habitat, and preserve the natural scenic beauty of navigable waters.

NR 115.15 Shoreland vegetation. (1) **PURPOSE.** Counties shall adopt shoreland vegetation standards to achieve the purposes of ss. 281.31 (1) and (6), Stats., by preserving and establishing shoreland vegetation in order to infiltrate storm water runoff, to screen shoreland development, and to limit direct and cumulative impacts of shoreland development on water quality; near-shore aquatic, wetland, and upland wildlife habitat; and natural scenic beauty.

(2) **GENERAL.** (a) *Vegetation removal criteria.* Any vegetation removal in the shoreland zone shall be governed by consideration of the effect on water quality and sound forestry and soil conservation practices, and shall be designed and implemented in a manner to minimize erosion, sedimentation and impairment to near-shore aquatic, wetland, and upland wildlife habitat, and natural scenic beauty.

(b) *Ground layer required.* Ground layer vegetation in the primary shoreland buffer, secondary shoreland buffer, and access corridor shall be preserved and maintained, or established and maintained, except for areas where structures are allowed under s. NR 115.13 or where activities are allowed in subs. (5) to (11).

Note: Nonnative plant species should generally be avoided when establishing a vegetated shoreland buffer. Section 23.24 (3)(a), Stats., provides that no person may introduce a nonnative aquatic plant into the waters of the state without an aquatic plant management permit issued by the Department of Natural Resources. Property owners should avoid planting nonnative plant species in the shoreland buffer area that may spread to nearby wetlands or waterways, such as reed canary grass.

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(c) *Shoreland buffer vegetation plan.* Except where the county previously approved of a shoreland buffer vegetation plan for the property that meets the standards in this section, the property owner shall submit to the county for approval a plan for the preservation, establishment and maintenance of vegetation in the shoreland buffers required in subs. (3) and (4), and the county shall require compliance with the plan as a permit condition, in the following situations:

1. When the property owner applies for a permit to construct a new residence or other principal structure on a parcel that has frontage on navigable waters or includes land within 75 feet of the ordinary high-water mark.
2. When preservation or restoration of vegetative buffers is required by a mitigation system adopted under s. NR 115.21 (6) for a parcel that has frontage on navigable waters or includes land within 75 feet of the ordinary high-water mark.
3. When preservation or restoration of vegetative buffers is required in order to exceed the 20% impervious surface limit under s. NR 115.17 (3)(b) for a parcel that has frontage on navigable waters or includes land within 75 feet of the ordinary high-water mark.
4. When land division decreases a lot's total frontage on navigable waters and decreases the width of the access corridor allowed under sub. (3)(c).

Note: The Wisconsin Natural Resources Conservation Service Standard for Shoreland Habitat, Code 643A, and its companion Wisconsin Biology Technical Note 1: Shoreland Habitat, provide specific criteria for the establishment of native vegetation for the improvement of fish and wildlife habitat, water quality, and bank stability.

(d) *Multiple-unit development buffer vegetation plans.* 1. 'New condominium development.' Where a shoreland buffer vegetation plan is required under par. (c) for new multiple-unit development and the land is owned by a condominium association, the condominium association, or its representative, shall submit to the county for approval a plan for the preservation, establishment, and maintenance of vegetation in the shoreland buffers required in subs. (3) and (4). No vegetation removal may be done to create an access corridor on a condominium-owned lot or parcel of land until the county has approved of the condominium association's plan for vegetation in the shoreland buffers.

2. 'New campgrounds and mobile home parks.' Where a shoreland buffer vegetation plan is required under par. (c) for a new campground or mobile home park, the owner of the property shall submit to the county for approval a plan for the preservation, establishment and maintenance of vegetation in the shoreland buffers required in subs. (3) and (4). No vegetation removal may be done to create an access corridor on the campground or mobile home park until the county has approved of the property owner's plan for vegetation in the shoreland buffer.

3. 'Existing multiple-unit developments.' a. Where a shoreland buffer vegetation plan is required under par. (c) for an existing campground, mobile home park or other multiple-unit development, the owner of the property shall submit to the county for approval a plan for a plan for the preservation, establishment and maintenance of vegetation in compliance with the requirements in subs. (3) and (4) for the area calculated under subd. par. b. No construction and no vegetation removal may be done to create an access corridor on the campground, mobile home park or other existing multiple-unit development until the county has approved of the property owner's plan for vegetation in the shoreland buffer.

b. The shoreland buffer shall run parallel to the ordinary high-water mark for a distance that equals or exceeds the total number of feet calculated using the following formula: the total width of the lot or parcel of land at the ordinary high-water mark divided by the total number of dwelling units located within 300 feet of the ordinary high-water mark on the lot or parcel of land multiplied

by 70%, multiplied by the number of dwelling units that are proposed to be constructed, expanded or replaced.

Note: For example, a condominium development with 1,000 feet of frontage, 10 dwelling units within 300 feet of the ordinary high-water mark and 10 dwelling units more than 300 feet from the ordinary high-water mark would calculate the width of the required shoreland vegetative buffer as follows: The vegetative buffer mitigation requirement for the construction, expansion or replacement of 1 dwelling unit would be $(1,000 \text{ feet} / 10) \times 70\%$ or 70 feet of vegetative buffer, measured along the ordinary high-water mark.

(3) **PRIMARY SHORELAND BUFFERS.** (a) *General.* Except as provided in subs. (5) to (12), or where a variance has been granted by the county board of adjustment, property owners shall preserve and maintain, or establish and maintain when required to do so under sub. (2)(c), a primary shoreland buffer in compliance with the standards in this subsection.

(b) *Minimum Area.* A primary shoreland buffer of native shoreland vegetation shall be preserved and maintained, or established and maintained when required by sub. (2)(c), in the area parallel to the ordinary high-water mark that extends a minimum of 35 feet inland, measured on a horizontal plane, from the ordinary high-water mark of navigable waters.

(c) *Access corridor.* Access corridors may extend through the primary shoreland buffer to the waterfront and shall be maintained in ground layer vegetation, such as turf grass, in order to provide pedestrian access to the waterfront, provided that the total width of the corridors on a lot or parcel does not exceed:

1. For lots or parcels of land with 200 feet or less of width at the ordinary high-water mark, the total width of the corridor or corridors shall not exceed 40 feet or 30% of the lot or parcel's width at the ordinary high-water mark, whichever is less.

2. For lots or parcels of land with more than 200 feet of width at the ordinary high-water mark, the total width of the corridor or corridors shall not exceed 20% of the lot or parcel's width at the ordinary high-water mark.

(d) *Vegetation management in the access corridor.* Shrubs and trees that have a trunk 6 inches in diameter or less at 4 feet above the base of the tree may be removed from the access corridor, if areas where trees or shrubs are removed are re-vegetated immediately to prevent erosion. Except where the county has issued a conditional use permit for an alternative vegetation removal plan under par. (f), trees larger than 6 inches in diameter at 4 feet above the base of the tree, may not be removed except for exotic, invasive, or damaged trees or trees that must be removed to control disease or that pose an imminent safety hazard. Any removed tree larger than 6 inches in diameter shall be replaced by planting a comparable species of native tree in the same area, unless replacement is not required by a conditional use permit issued by the county under par. (f).

(e) *Vegetation management outside the access corridor.* 1. 'Pruning'. The pruning of trees and shrubs in the primary shoreland buffer outside of access corridors may be allowed by the county, provided that the pruning does not jeopardize the health or change the natural shape of the tree or shrub. If a tree or shrub dies after pruning, the tree or shrub shall be replaced by planting a comparable species of native tree or shrub in the same area, unless replacement is not required by a conditional use permit issued by the county under par. (f).

2. 'Removal'. Vegetation may not be removed from the primary shoreland buffer outside of access corridors, except for the removal of exotic, invasive, damaged vegetation or vegetation that must be removed to control disease or poses an imminent safety hazard. Any removed vegetation shall be replaced by planting comparable species of native vegetation in the same area.

(f) *Alternative vegetation management plan.* Counties may issue a conditional use permit for a vegetation removal plan that differs from the vegetation management standards in pars. (d) and (e) if the alternative vegetation management plan satisfies all of the following conditions:

1. The removal or cutting of vegetation will not cause significant erosion or destruction of natural scenic beauty.
2. The remaining vegetation will provide visual screening from the water of dwellings, parking areas, and other structures.
3. No tree removal is allowed in the access corridor of the primary shoreland buffer unless there will be at least 60 square feet of basal area per acre in trees 6 inches in diameter 4 feet above the base of the tree remaining after the proposed removal.
4. No tree removal is allowed in the primary shoreland buffer outside of the access corridor unless there will be at least 100 square feet of basal area per acre in trees 6 inches in diameter 4 feet above the base of the tree remaining after the proposed removal.

(g) *Existing lawns.* Lawns and other areas where native vegetation was removed, prior to the county's adoption of the shoreland zoning ordinance amendment that requires a primary shoreland buffer, may be maintained, but not expanded except as provided in this section.

(4) **SECONDARY SHORELAND BUFFER.** A secondary shoreland buffer of ground layer vegetation, such as turf grass, shall be preserved and maintained, or established and maintained, parallel to the ordinary high-water mark of navigable waters, and extending a minimum of 40 feet landward, measured on a horizontal plane, from the inland edge of the primary shoreland buffer. The pruning and removal of trees and shrubs may be allowed in the secondary shoreland buffer.

(5) **AGRICULTURAL PRACTICES AND FARM DRAINAGE DITCHES.** (a) Land used for non-structural agricultural practices is exempt from the shoreland buffer requirements in subs. (3) and (4).

NOTE: The Department of Natural Resources plans to develop standards for agricultural buffers in the shorelands of navigable bodies of water as part of the process to revise ch. NR 151.

(b) The land adjacent to farm drainage ditches with no previous stream history is exempt from county shoreland zoning regulation if the land adjacent to the farm drainage ditch is maintained in non-structural agricultural use, under s. 281.31 (2m), Stats. If land adjacent to a farm drainage ditch is not exempt from county shoreland zoning regulation, the removal of trees and shrubs within the primary buffer along the farm drainage ditch may be permitted by the county if the removal is part of drainage ditch maintenance work that is conducted consistent with the requirements of ch. 88, Stats., and if the tree and shrub removal is limited to the minimum amount necessary to maintain the farm drainage ditch. Land adjacent to farm drainage ditches shall be vegetated and maintained with ground layer vegetation, such as turf grass.

(6) **FOREST MANAGEMENT ACTIVITIES.** Forest management activities are exempt from the shoreland buffer requirements in subs. (3) and (4) if the property owner, or an agent or contractor of the owner, implements the voluntary forestry best management practices found in "Wisconsin's Forestry Best Management Practices for Water Quality, PUB FR-093 2003," published by the department in March 1995 and reprinted in May 2003.

NOTE: Copies of "Wisconsin's Forestry Best Management Practices for Water Quality, PUB FR-093 2003," are available for inspection at the offices of the Department of Natural Resources, the Secretary of State, and the Revisor of Statutes. Copies may be obtained from the Wisconsin Department of Natural Resources, Division of Forestry, 101 S. Webster Street, P.O. Box 7921, Madison, WI 53707-7921. Property owners may seek advice on implementation of Forestry "BMPs" from county foresters and foresters employed by the Department of Natural Resources.

(7) **NATURAL AREAS MANAGEMENT ACTIVITIES.** Natural areas management activities are exempt from the shoreland buffer requirements in subs. (3) and (4) if carried out consistent with a department-approved management plan, or with a management plan that was developed by a professional natural resource manager to satisfy the purposes of sub. (1) and that is filed with the county, as specified in the county's shoreland zoning ordinance.

(8) **DAM AND LEVEE MAINTENANCE ACTIVITIES.** Dam and levee maintenance activities are exempt from the shoreland buffer requirements in subs. (3) and (4) if carried out consistent with the requirements of s. 31.18, Stats. Earthen dam and levee embankments shall be maintained with ground layer vegetation, such as turf grass.

(9) **UTILITY MAINTENANCE ACTIVITIES.** Utility maintenance activities are exempt from the shoreland buffer requirements in subs. (3) and (4) if carried out consistent with the safe operation of public utilities and if ground layer vegetation is preserved and maintained, or established and maintained.

NOTE: Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

(10) **ROAD INTERSECTION AND DRIVEWAY MAINTENANCE ACTIVITIES.** Roadway intersection and driveway line-of-sight maintenance activities are exempt from the shoreland buffer requirements in subs. (3) and (4) if necessary to maintain required lines-of-sight, provided that ground layer vegetation is preserved and maintained, or established and maintained, and if the activities are carried out consistent with ss. 66.1037 and 82.03 (5)(b), Stats., as affected by 2003 Wisconsin Act 214.

(11) **TEMPORARY ACCESS.** Activities that provide temporary access to a construction site for construction equipment are exempt from the shoreland buffer requirements in subs. (3) and (4) if no other feasible location is available for the equipment to access the construction site and if the county approves a revegetation and erosion control plan that is developed, implemented and maintained to address erosion control issues and to restore the ground, shrub and tree layers of vegetation in the areas disturbed by the temporary access. Vegetation shall be established before the onset of winter or a temporary ground cover shall be established and maintained to prevent soil erosion until permanent vegetation is established the following spring.

(12) **REDUCED SHORELAND SETBACKS.** Nonconforming structures or structures that qualify for a reduced shoreland setback under s. NR 115.13 (6) may have a reduced primary shoreland buffer if necessary to allow 15 feet of secondary buffer around the footprint of the principal structure.

NR 115.17 Impervious Surfaces (1) PURPOSE. Counties shall adopt impervious surface standards for the construction, expansion and replacement of structures in the shoreland zone to achieve the purposes of ss. 281.31 (1) and (6), Stats. by ensuring that the construction, expansion or replacement of a structure in the shoreland zone is designed to limit environmental impacts in order to prevent and control water pollution, and to limit the direct and cumulative impacts of shoreland development on water quality; and near-shore aquatic, wetland and upland wildlife habitat.

(2) **GENERAL.** (a) *Permit conditions.* Counties may not issue a zoning permit for, or otherwise allow, the construction, expansion, or replacement of a structure in the shoreland zone unless the permit or authorization is conditioned upon compliance with the standards in this section except where a variance has been granted by the county board of adjustment.

(b) *Condominiums and other multiple-unit developments.* If counties receive an application for a permit to authorize the construction, expansion, or replacement, of a dwelling unit, building or other structure in the shoreland zone that is owned as a condominium or is part of a campground, mobile home park or other multi-unit development, counties shall require the applicant to document that the entire development complies with the impervious surface standards in sub. (3).

(3) IMPERVIOUS SURFACE STANDARD. (a) Whenever the construction of impervious surfaces in the shoreland is proposed, counties shall require property owners to implement and maintain best management practices that result in no increase in storm water discharge from the lot or parcel as a result of the construction of impervious surfaces, for storms up to and including the 10 year, 24 hour storm event to the maximum practicable, as that phrase is defined in s. NR 151.002 (25). Examples of best management practices include directing downspouts onto lawns or rain gardens and away from driveways and other pavement, and avoidance of piping or channelizing flow from impervious surfaces into waters of the state.

Note: Section NR 151.002(25) defines “maximum extent practicable” to mean “a level of implementing best management practices in order to achieve a performance standard specified in this chapter which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features.” MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.

(b) If as a result of the construction of impervious surfaces, the total area of impervious surfaces on a lot or parcel exceeds 20% of the lot’s or parcel’s area and the lot or parcel includes land within 75 feet of the ordinary high-water mark, the shoreland buffers shall be preserved or established on the lot or parcel in compliance with the standards in s. NR 115.15.

Note: The department maintains a list of technical standards that it has determined adequate and effective for designing best management practices to control erosion and sediment runoff. Contact the department storm water program in the Bureau of Watershed Management at (608) 267-7694 to obtain a copy of this list or visit the department’s storm water webpage at www.dnr.wi.gov/org/water/nps/stormwater.htm

NR 115.19 Land disturbing activities. (1) PURPOSE. Counties shall adopt land disturbing activity standards to achieve the purposes of ss. 281.31 (1) and (6), Stats., by minimizing vegetation removal, soil erosion, soil compaction, and sedimentation in order to limit direct and cumulative impacts of shoreland development on water quality; near-shore aquatic, wetland and upland wildlife habitat; and natural scenic beauty.

(2) GENERAL. (a) *Erosion control plan and shoreland buffer vegetation plan.* Except for the construction of necessary drains, ditches or embankments for the improvement or protection of a town highway that is authorized under s. 82.03 (5)(a), Stats., as affected by 2003 Wisconsin Act 214, counties may not allow land disturbing activities in the shoreland zone unless the property owner submits an erosion control plan and a shoreland buffer vegetation plan to the county for approval that will minimize erosion and sedimentation caused by the proposed land disturbing activities and that complies with par. (b) and the shoreland vegetation standards in s. NR 115.15.

Note: Land disturbing activities must also satisfy the requirements of ch. 30, Stats., chs. NR 151 and 216, and other state and federal laws, where applicable, including that erosion control measures required in the Uniform Dwelling Code (Comm 21.125), the commercial construction site erosion control standards in the Wisconsin Commercial Building Code (Comm 61.115) and the storm water and clearwater plumbing system requirements in ss. Comm 82.36 and 82.365 in the Uniform Plumbing Code.

(b) *Wetland buffer.* Counties may not allow land disturbing activities within 10 feet of the boundary of any wetland within the shoreland zone.

(3) **PERMIT REQUIRED.** Except as provided in sub. (4), a county zoning permit is required for land disturbing activities if one or both of the following criteria are satisfied:

(a) The proposed project includes 1,000 square feet or more of land disturbing activity wholly or partially within 75 feet of the ordinary high-water mark of navigable waters.

(b) The proposed project includes 2,000 square feet or more of land disturbing activity wholly or partially between 75 feet and 300 feet from the ordinary high-water mark of navigable waters.

(4) **PERMIT EXEMPTION.** Any land disturbing activity for which a permit has been granted by the department under ch. 30, Stats., or ch. NR 216 may be exempt from the county zoning permit requirement in sub. (3), if the department-issued permit is filed with the county as specified in the county's shoreland zoning ordinance. A county may also exempt from the county zoning permit requirement in sub. (3) land disturbing activity at a commercial construction site for which a notice of intent has been reviewed and approved by the department of commerce, in compliance with the requirements in s. Comm 61.115.

NOTE: Counties also have the option of becoming an authorized local program under s. NR 216.415 for construction site storm water discharge permits or s. NR 341.02 (3) for grading on the bank of a navigable waterway in conjunction with the issuance of county permits.

NR 115.21 Nonconforming uses and structures. (1) **PURPOSE.** Counties shall adopt nonconforming uses and nonconforming structure standards to achieve the purposes of ss. 281.31 (1) and (6), Stats., by placing restrictions on expansions and changes to nonconforming uses, and on structural alterations, expansion and replacement of nonconforming structures, in order to maintain adequate room between structures and navigable waters for primary shoreland buffers, secondary shoreland buffers, and the infiltration of storm water runoff, and to limit the direct and cumulative impacts of shoreland development on water quality; near-shore aquatic, wetland and upland wildlife habitat; and natural scenic beauty.

(2) **NONCONFORMING USES.** Under s. 59.69 (10) and s. 59.692 (2)(a), Stats., a county shoreland zoning ordinance may not prohibit the continuance of the lawful use of any building or premises for any trade or industry for which such building or premises is used at the time that the ordinance took effect, but the alteration of, or addition to, any existing building or other structure used for any nonconforming trade or industry may be regulated or prohibited. Counties shall prohibit the expansion of buildings or other structures with a nonconforming trade or industrial use and shall regulate the structural alteration and replacement of such a building or other structure, in compliance with the standards in subs. (3) and (4), if that building or other structure is a nonconforming structure. Counties may allow the continuation of other types of nonconforming uses in shorelands, subject to the standards in subs. (3) and (4) that apply to nonconforming structures. However, counties shall prohibit the expansion of nonconforming uses, the expansion of structures with nonconforming uses, and changes to nonconforming uses, consistent with Wisconsin common law, and counties shall require any future use of the building and premises where a nonconforming use was located to conform to the county's shoreland zoning ordinance if a nonconforming use is discontinued for a period of 12 months, as provided in s. 59.69 (10), Stats.

NOTE: The minimum standards that apply to county regulation of substandard lots and parcels of land in the shoreland area are found in s. NR 115.11 (9).

(3) **NONCONFORMING ACCESSORY STRUCTURES.** Except as provided in sub. (5) or (7), counties shall regulate all nonconforming accessory structures that have any part of the structure in the shoreland setback area as follows, unless a variance has been granted by the county board of adjustment:

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(a) The ordinary maintenance and repair of nonconforming accessory structures shall be allowed.

(b) Counties may not allow the structural alteration of a nonconforming accessory structure unless the requirements of the county's mitigation system adopted under sub. (6) are satisfied. The foundation of a nonconforming accessory structure may not be replaced or structurally altered, unless the structure is moved to a location that complies with the shoreland setback standards in s. NR 115.13.

(c) The expansion or replacement of a nonconforming accessory structure is prohibited, unless the requirements of s. 59.692 (1s), Stats., are satisfied.

(d) Moving a nonconforming accessory structure is prohibited unless the structure is moved to a location that complies with the shoreland setback standards in s. NR 115.13.

(4) **NONCONFORMING PRINCIPAL STRUCTURES.** Except as provided in sub. (5) or (7), counties shall regulate all nonconforming principal structures that have any part of the structure in the shoreland setback area as follows, unless a variance has been granted by the county board of adjustment:

Note: Nonconforming mobile homes that are not located in a legal nonconforming mobile home park are subject to the same standards in this subsection as other nonconforming principal structures because mobile homes fall within the definition of "structure" in s. NR 115.03 (49). Section NR 115.21 (5) only applies to nonconforming mobile homes and manufactured homes in mobile home parks.

(a) *Ordinary maintenance and repair.* Ordinary maintenance and repair of nonconforming principal structures shall be allowed.

(b) *Structural alteration.* Counties may not allow the structural alteration of nonconforming principal structures unless the requirements of the county's mitigation system adopted under sub. (6) are satisfied.

(c) *Expansion.* 1. The expansion of a nonconforming principal structure that has any part of the structure located within 35 feet of the ordinary high-water mark of navigable waters is prohibited.

2. Counties may only allow the horizontal expansion of a nonconforming principal structure if it is entirely set back a minimum of 35 feet from the ordinary high-water mark of navigable waters and all of the following conditions are satisfied, and may only allow the vertical expansion, or vertical and horizontal expansion, of a nonconforming principal structure if it is entirely set back a minimum of 50 feet from the ordinary high-water mark of navigable waters and all of the following conditions are satisfied:

a. The lot or parcel of land that the nonconforming principal structure is located on has an area of at least 7,000 square feet and is a legal lot of record.

b. The total footprint of the nonconforming principal structure and any attached or detached garage that is located less than 75 feet from the ordinary high-water mark with the new addition added may not exceed the maximum total square footage of the footprint specified in Appendix A, for the shoreland setback of the expanded nonconforming principal structure.

c. No portion of the expanded structure may extend closer to the ordinary high-water mark than the existing nonconforming principal structure. If the expansion is horizontal, the proposed addition is added on a side of the nonconforming principal structure that faces away from the

ordinary high-water mark of the navigable waters, or fills in space in an irregular footprint to form a square or rectangle.

d. The requirements of the county's mitigation system adopted under sub. (6) shall be satisfied.

(d) *Replacement.* Counties may not allow the replacement of a nonconforming principal structure unless the requirements of s. 59.692 (1s), Stats., or the following conditions are satisfied:

1. The lot or parcel of land that the nonconforming principal structure is located on has an area of at least 7,000 square feet and is a legal lot of record.

2. If the existing nonconforming principal structure does not have a foundation, the foundation extends below the ordinary high-water mark, or the structure extends over navigable waters, the structure may not be replaced, unless the structure is moved to a location that complies with the shoreland setback standards in s. NR 115.13.

3. If the existing nonconforming principal structure has a foundation, the structure may be replaced on the existing foundation except as provided in subd. 2. If the existing nonconforming principal structure is entirely setback a minimum of 50 feet from the ordinary high-water mark of navigable waters, the existing foundation may be structurally altered or replaced in the same footprint.

4. No portion of the replacement structure may extend closer to the ordinary high-water mark than the existing nonconforming principal structure.

e. If any part of the nonconforming principal structure is located within 50 feet of the ordinary high-water mark, the height of the replacement structure may not exceed the height of the existing structure, unless an increase in height is necessary to convert a flat roof to a pitched roof.

f. The requirements of the county's mitigation system adopted under sub. (6) shall be satisfied.

(e) *Replacement and expansion.* Counties may not allow the expansion of a nonconforming principal structure that is being replaced unless all of the conditions in both pars. (c) and (d) are satisfied. Only the replaced portion of the nonconforming principal structure is required to be reconstructed on a foundation in the original footprint, however. The foundation of an addition allowed under par. (c) may be constructed outside of the original footprint, notwithstanding the requirements of par. (d) 3.

(f) *Relocation.* Counties may not allow a nonconforming principal structure in the shoreland setback area to be relocated unless the structure is moved to a location that complies with the shoreland setback standards in s. NR 115.13.

(5) **NONCONFORMING STRUCTURES IN CAMPGROUNDS AND MOBILE HOME PARKS.** Except as provided in sub. (7), counties shall regulate as follows all nonconforming camping units that remain on a campsite for more than 120 days in any calendar year, nonconforming mobile homes, and other nonconforming structures located in a campground or mobile home park if any part of the structure is located in the shoreland setback area, unless a variance has been granted by the county board of adjustment:

(a) *Ordinary maintenance and repair.* The ordinary maintenance and repair of nonconforming structures in a campground or mobile home park shall be allowed.

(b) *Structural alteration.* Counties may not permit the structural alteration of a nonconforming structure in a campground or mobile home park unless the requirements of the county's mitigation system adopted under sub. (6) are satisfied.

(c) *Expansion.* The expansion of a nonconforming structure in a campground or mobile home park is prohibited.

(d) *Replacement.* Counties may not permit the replacement of a nonconforming structure, such as camping unit, mobile home, manufactured home, park model home, storage shed, deck, or patio on a campsite or in a mobile home park unless the requirements of s. 59.692 (1s), Stats., or the following conditions are satisfied:

1. A nonconforming principal structure on a campsite or in a mobile home park may only be replaced with a structure of the same type that is not any wider or longer than the existing nonconforming structure. For example, a mobile home may only be replaced with another mobile home or manufactured home of the same or smaller dimensions.

2. Nonconforming accessory structures on a campsite or mobile home park site may be replaced with structures of the same size and type if the total floor area of all nonconforming accessory structures on that site does not exceed 200 square feet.

3. If the existing nonconforming structure does not have a foundation, the replacement structure may not have a foundation. An existing foundation may be reused, but may not be replaced unless the foundation is at least 50 feet from the ordinary high-water mark.

4 No portion of the replacement structure may extend closer to the ordinary high-water mark than the existing nonconforming structure.

5. The requirements of the county's mitigation system adopted under sub. (6) shall be satisfied

(6) MITIGATION SYSTEM. (a) All counties shall adopt a mitigation system in their shoreland zoning ordinances that requires mitigation that is roughly proportional to the magnitude of the potential adverse impacts of the proposed project on water quality; near-shore aquatic, wetland and upland wildlife habitat; and the natural scenic beauty of navigable waters, and that meets the following minimum standards:

1. 'Level 1 mitigation.' For permits issued for the structural alteration of nonconforming accessory structures, or the replacement of nonconforming accessory structures in campgrounds or mobile home parks, counties shall adopt specific requirements, to be determined by each county, to ensure that the purposes of ss. 281.31 (1) and (6), Stats. are achieved on the lot or parcel where the structural alteration is proposed.

Note: The department will maintain a list of technical standards that it has determined adequate and effective for designing mitigation practices to achieve the purposes of ss. 281.31 (1) and (6), Stats.

2. 'Level 2 mitigation.' For permits issued for the structural alteration, replacement or expansion of nonconforming principal structures, counties shall adopt mitigation systems that include, at a minimum, the following requirements:

a. The inspection and upgrading, if necessary, of private on-site wastewater treatment systems located on properties where a nonconforming principal structure is proposed to be replaced or expanded.

b. The preservation and maintenance of existing primary shoreland buffers that satisfy the requirements in s. NR 115.15 (3).

c. The restoration and maintenance of primary shoreland buffers in areas where vegetation has previously been removed, including the planting of new vegetation on a scale that is at least proportional to the magnitude of the potential adverse impacts of the proposed project.

d. The management of storm water runoff from impervious surfaces to promote infiltration, to the maximum extent practicable.

3. 'Removal of nonconforming accessory structures.' Counties may choose to require the removal of nonconforming accessory structures as a mitigation option under either level 1 or level 2.

(b) Whenever a property owner applies for a permit to structurally alter, replace or expand a nonconforming principal structure, the county shall require the property owner to submit an erosion control plan and shoreland buffer vegetation plan before any zoning permit is issued, and shall require compliance with the plan as a permit condition. The county shall approve the shoreland buffer vegetation plan if it complies with the county's mitigation requirements, adopted in compliance with the requirements in par. (a) and s. NR 115.15 (2)(c) and (d). If the property owner has previously submitted a shoreland buffer vegetation plan for the same property prior to obtaining a permit for land disturbing activities that has been approved by the county and that meets all of the applicable requirements in this paragraph and par. (a), the county may exempt the property owner from having to submit another plan as required in this paragraph. The shoreland buffer vegetation plan required in this paragraph shall, at a minimum:

1. Describe the vegetation in the primary shoreland buffer that the property owner proposes to preserve and maintain, or establish and maintain, on the property where the nonconforming structure is located.

2. Prohibit the removal of trees or shrubs in the primary shoreland buffer, unless the trees or shrubs can be removed and replaced in compliance with the standards in s. NR 115.15 (3).

3. Describe how storm water runoff will be managed to direct runoff from impervious surfaces to vegetated areas to promote infiltration, to the maximum extent practicable.

(7) ALTERNATIVE NOCONFORMING STRUCTURE STANDARDS. Counties may apply to the department for approval of alternative nonconforming structure standards that are different than the standards in subs. (4)(c) 2.b. and (4)(d) 3.

1. If counties choose to limit allowable structural alterations, expansions and replacements of nonconforming structures to costs that do not exceed 50% of the fair market value of the existing nonconforming structure over the life of the structure, the county shall include the retail value of any donated materials and any donated labor in calculating the cost of the work.

2. If counties choose to limit allowable structural alterations, expansions, and replacements of nonconforming structures with standards that are different from subs. (4)(c) 2.b. and (4)(d) 3. or subd. 1., applications filed by counties under this subsection shall demonstrate to the department how the proposed standards will require nonconforming structures to ultimately become compliant with the provisions of this chapter and the county's shoreland zoning ordinance and how the proposed standards will be as effective or more effective than the standards in subs. (4)(c) 2.b. and (4)(d) 3. in achieving the purposes of ss. 281.31 (1) and (6). Stats. to control and prevent water pollution, prevent further degradation of near-shore aquatic, wetland and upland wildlife habitat, and preserve the natural scenic beauty of navigable waters.

NR 115.23 Adoption of administrative and enforcement provisions. The shoreland ordinance adopted by each county shall provide for:

(1) The appointment of a zoning administrator, or staff person with the duties of a zoning administrator, and such additional staff as the workload may require.

(2) The zoning administrator, or other zoning staff with appropriate training, may make the initial determination regarding the navigability of a body of water or the location of the ordinary high-water mark for surface waters of the county. However, if questions arise, the zoning administrator shall contact the appropriate regional office of the department to request an official determination of navigability or the location of the ordinary high-water mark by department staff.

(3) The creation of a county zoning agency, as authorized by s. 59.69, Stats., a board of adjustment, as authorized by s. 59.694, Stats., and a county planning agency, as defined in s. 236.02 (1), Stats., and required by s. 59.692 (3), Stats.

(4) A system of zoning permits and fees for all new development, construction, replacement, expansion, structural alteration, and moving of buildings and other structures and other activities as required by this chapter. This system shall include a plan to coordinate with other county offices and town governments to ensure that landowners in unincorporated areas of the county are informed about the requirements of the county shoreland zoning ordinance when they apply for building permits and sanitary permits. All applications shall be required to include a site diagram that shows, at a minimum: the setback from the ordinary high-water mark of all structures on the lot or parcel, any proposed vegetation cutting or removal, and the location and area of all existing and proposed impervious surfaces. A copy of all applications shall be required to be filed in the office of the county zoning administrator. All county shoreland zoning ordinances shall provide that permits shall expire if construction has not commenced by a date established in the county ordinance.

(5) Regular inspection of permitted work in progress to insure conformity of structures and other activities with the requirements of the county shoreland zoning ordinance.

(6) A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance in accordance with the regulations and restrictions under s. 59.694 (7)(c), Stats. All county shoreland zoning ordinances shall provide that variances that are granted shall expire if the construction that is allowed by the variance has not commenced by a date established in the county ordinance.

(7) The incorporation of the purpose statements in sections NR 115.09 to NR 115.21 in the relevant sections of the county shoreland zoning ordinance, and in the county land division regulations that apply in the shoreland zone.

NOTE: The Wisconsin Supreme Court has held that whether or not “unnecessary hardship” exists in a variance case “will depend upon the board of adjustment’s consideration of the purpose of the zoning restriction in question (including the important public purposes of shoreland zoning generally), the effect of the restriction on the property, and the effect of a variance on the neighborhood and the larger public interest.” *State ex re. Ziervogel v. Washington County Board of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401 at ¶ 42. See also *State v. Waushara County Board of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514 at ¶ 32.

(8) A conditional use procedure for uses presenting special conditions. Counties may not substitute a conditional use permit process for the variance process in situations where a variance is required under this chapter because the use or activity is prohibited or is not allowed because specific standards are not satisfied.

(9) The county shall keep a complete record in form of written minutes, a tape recording or transcript of all proceedings before the board of adjustment, and the county zoning agency, and

shall retain these records in compliance with the requirements of the public records law in ss. 19.21 to 19.39, Stats.

(10) Written notice and a copy of all application forms and attachments submitted by the applicant shall be sent to the appropriate regional office of the department by the county at least 10 business days prior to all hearings on proposed variances, conditional uses, appeals for map or text interpretations, and map or text amendments, and the county shall submit to the same office of the department copies of decisions on variances, conditional uses, appeals for map or text interpretations, and map or text amendments within 10 business days after they are granted or denied.

(11) Mapped zoning use districts and the recording, on an official copy of such map, of all use district boundary amendments. As updated Wisconsin Wetland Inventory maps become available, counties shall adopt the updated maps for shoreland-wetland zoning districts within 180 days of final completion. The boundaries of the shoreland zone and the location of navigable waters are not required to be mapped if described in the text of the ordinance.

(12) The establishment of appropriate penalties for violations of the requirements of the ordinance, including at a minimum forfeitures of not less than \$10 and not more than \$1,000 per violation, or twice the amount of any permit fee that the violator did not, but should have, paid, whichever is more. Each day of continued violation is a separate offense. Compliance with the ordinance shall also be enforceable by the use of injunctions to prevent or abate a violation, as provided in s. 59.69 (11), Stats.

(13) The prosecution of violations of the ordinance.

(14) The procedure that is to be followed to process applications from persons who claim to be disabled and who are requesting that they be allowed to take action that would otherwise be prohibited under the shoreland zoning ordinance because of their disability. In order to allow a disabled person who is entitled to reasonable accommodations under the Americans with Disabilities Act, the federal Fair Housing Act or the Wisconsin Open Housing Law to take action that would otherwise violate the requirements of the county's shoreland zoning ordinance, counties shall issue an administrative permit to the disabled person. Counties may not issue variances to disabled persons unless the statutory variance criteria in s. 59.694 (7)(c), Stats., are satisfied for the lot or parcel of land in question.

NOTE: The Americans with Disabilities Act ("ADA"), 42 USC 12101 to 12213, requires states and local units of government to take action to avoid discriminating against disabled persons in their employment practices, in public accommodations and in all programs, activities and services provided by the governmental entity. The federal Fair Housing Act, 42 USC 3601 to 3631, and the Wisconsin Open Housing Law, s. 106.50, Stats., require local governments to make "reasonable accommodations" in the application of zoning ordinances in order to provide equal opportunity to housing to disabled persons. However, the issuance of a variance is not the appropriate mechanism for granting "reasonable accommodations" that are required because of a person's disabilities because, under Wisconsin law, variances can only be granted based on the unique characteristics of the property.

NR 115.25 Department duties. (1) ASSISTANCE TO COUNTIES. To the full extent of its available resources, the department shall provide advice and assistance to counties in the development, adoption, administration and enforcement of their shoreland zoning ordinances, consistent with the shoreland protection objectives found in s. 281.31, Stats. As a part of this effort, the department shall prepare a model shoreland zoning ordinance which counties may use in meeting the requirements of s. 59.692, Stats., and this chapter.

(2) REVIEW AND APPROVAL OF SHORELAND ZONING ORDINANCES. (a) Compliance with the requirements of s. 59.692, Stats., will be determined by the department by comparing the

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shoreland zoning ordinance that has been enacted by a county with the minimum standards for shoreland regulation contained in this chapter. The department shall issue a certificate of compliance when a county has, in the opinion of the department, complied with s. 59.692, Stats., this chapter and amendments to this chapter.

(b) The department shall periodically reevaluate shoreland zoning ordinances to ascertain their continuing compliance with this chapter. A county shall keep its shoreland zoning ordinance current, effective and workable to retain its status of compliance.

(c) The department shall review all proposed shoreland zoning ordinance amendments, including amendments to shoreland wetland zoning districts pursuant to s. NR 115.07 (5), to ensure that an ordinance which is amended as proposed will retain its status of compliance with s. 59.692, Stats., and this chapter.

(3) DETERMINATION OF ORDINANCE NONCOMPLIANCE. (a) Counties that do not have a shoreland zoning ordinance in effect shall be deemed to be in noncompliance with s. 59.692, Stats., and this chapter. The department shall, pursuant to s. 59.692 (6), Stats., adopt an ordinance, after notice and hearing, if a county fails to adopt a complying shoreland zoning ordinance within 6 months after taking one or more of the following steps:

1. Proceeding on its own with the drafting and enactment of a shoreland zoning ordinance.

2. Contracting with a consultant to draft a shoreland zoning ordinance.

3. Cooperating with the staff of the department to draft the shoreland zoning ordinance to be enacted by the county. All costs for such action by the department shall be borne by the noncomplying county.

(b) Counties that have shoreland zoning ordinances that do not meet the minimum standards contained in this chapter shall be deemed to be in noncompliance with the requirements of s. 59.692, Stats.

1. If a county fails to modify its ordinance to meet the minimum standards in this chapter within 2 years after [Revisor: insert the effective date of this rule order], unless the department grants an extension in response to an explanation from the county as to why more time is needed, the department shall adopt a superseding ordinance amendment for the county, after notice and hearing, pursuant to s. 59.692 (6), Stats.

2. If a county fails to modify its ordinance to meet the minimum standards in this chapter within 6 months after a notification of noncompliance, unless the department grants an extension in response to an explanation from the county as to why more time is needed, the department shall adopt a superseding ordinance amendment for the county, after notice and hearing, pursuant to s. 59.692 (6), Stats.

(4) MONITORING OF ZONING DECISIONS. It is the responsibility of the department, to aid in the fulfillment of the state's role as trustee of its navigable waters, to monitor the administration and enforcement of shoreland zoning ordinances. In so doing, the department:

(a) Shall review decisions granting conditional uses, variances and appeals to ensure compliance with the county shoreland zoning ordinance and this chapter;

(b) May appeal the actions of county zoning officials to county boards of adjustment, under s. 59.694 (4), Stats.; and

(c) May seek certiorari review of the decisions of boards of adjustment, under s. 59.694 (10), Stats.

Appendix A: Maximum Footprints For Reduced Shoreland Setback or Expansion of Nonconforming Principal Structures.

If no compliant building location is available on the lot:

(OHWM Setback: Maximum total square footage of the footprint)

| | | | |
|----------|----------|----------|----------|
| 35: 1000 | 45: 1250 | 55: 1500 | 65: 1750 |
| 36: 1025 | 46: 1275 | 56: 1525 | 66: 1775 |
| 37: 1050 | 47: 1300 | 57: 1550 | 67: 1800 |
| 38: 1075 | 48: 1325 | 58: 1575 | 68: 1825 |
| 39: 1100 | 49: 1350 | 59: 1600 | 69: 1850 |
| 40: 1125 | 50: 1375 | 60: 1625 | 70: 1875 |
| 41: 1150 | 51: 1400 | 61: 1650 | 71: 1900 |
| 42: 1175 | 52: 1425 | 62: 1675 | 72: 1925 |
| 43: 1200 | 53: 1450 | 63: 1700 | 73: 1950 |
| 44: 1225 | 54: 1475 | 64: 1725 | 74: 1975 |

If a compliant building location is available on the lot:

(OHWM Setback: Maximum total square footage of the footprint)

| | | | |
|---------|----------|----------|----------|
| 35: 750 | 45: 1000 | 55: 1250 | 65: 1500 |
| 36: 775 | 46: 1025 | 56: 1275 | 66: 1525 |
| 37: 800 | 47: 1050 | 57: 1300 | 67: 1550 |
| 38: 825 | 48: 1075 | 58: 1325 | 68: 1575 |
| 39: 850 | 49: 1100 | 59: 1350 | 69: 1600 |
| 40: 875 | 50: 1125 | 60: 1375 | 70: 1625 |
| 41: 900 | 51: 1150 | 61: 1400 | 71: 1650 |
| 42: 925 | 52: 1175 | 62: 1425 | 72: 1675 |
| 43: 950 | 53: 1200 | 63: 1450 | 73: 1700 |
| 44: 975 | 54: 1225 | 64: 1475 | 74: 1725 |